



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 30186712

Date: FEB. 22, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks to classify the Beneficiary as an individual of extraordinary ability in business. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record does not establish the Beneficiary received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen]'s entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

As noted above, the Director concluded the record does not establish the Beneficiary received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner does not overcome the Director’s denial for the reasons discussed below.

A. One-Time Achievement of a Major, Internationally Recognized Award

The Director acknowledged that the record contains a copy of a [redacted] and that the Petitioner asserted that it received the award based on the work of the Beneficiary. However, the Director explained that “the regulation [at 8 C.F.R. § 204.5(h)(3)] requires that the [B]eneficiary be the recipient of a one-time achievement that is a major, internationally recognized award.” The Director noted that the Petitioner, not the Beneficiary, received the award; therefore, the Director concluded that the [redacted] granted to the Petitioner does not establish the Beneficiary is the recipient of a one-time achievement that is a major, internationally recognized award, as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3).

On appeal, the Petitioner reasserts that the award “was given to the [P]etitioner as a direct result of the [B]eneficiary’s work” and that “the recognition should go to the [B]eneficiary.” The Petitioner also discusses on appeal how its revenue increased after it hired the Beneficiary, it lists “clients the [B]eneficiary has brought to the [P]etitioner,” and it discusses other, similar information.

The regulation at 8 C.F.R. § 204.5(h)(3) contemplates an individual with sustained national or international acclaim, whose achievements have been recognized in the field of expertise, demonstrated, in relevant part, by receipt of a one-time achievement of a major, internationally recognized award. The regulation at 8 C.F.R. § 204.5(h)(3) does not contemplate an award granted to an individual’s employing entity. Because the Petitioner, not the Beneficiary, received the [redacted] [redacted] the award is immaterial to whether the Beneficiary has received a one-time achievement of a major, internationally recognized award, as contemplated by the regulation at

8 C.F.R. § 204.5(h)(3). The record does not otherwise establish that the Beneficiary has received a one-time achievement as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3).

B. Evidentiary Criteria Listed at 8 C.F.R. § 204.5(h)(3)(i)-(x)

The Director concluded that the record does not satisfy any of the 10 initial evidentiary criteria, specifically addressing the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (ix), and noting that the Petitioner abandoned the criterion at 8 C.F.R. § 204.5(h)(3)(x) in response to a prior request for evidence. On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (ix). The Petitioner does not assert on appeal that the record satisfies any of the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iv)-(viii), or (x), thereby waiving those potential criteria. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)).

Documentation of the [noncitizen's] receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Director acknowledged that the record contains a copy of the [redacted] awarded to the Petitioner, discussed above, and “various certificates of achievements issued to the [Petitioner] for efforts to export into new international markets.” The Director concluded that, because neither the award nor the certificates were issued to the Beneficiary, they do not qualify as the documentation contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(i). The Director further noted that the record does not establish how the various certificates issued to the Petitioner qualify as the type of prizes or awards for excellence contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner reiterates that the award “was given to the [P]etitioner as a direct result of the [B]eneficiary’s work” and that “the recognition should go to the [B]eneficiary.” The Petitioner also repeats, verbatim, several paragraphs of the brief that pertain to the one-time achievement criterion, noted above. On appeal, the Petitioner does not address the “various certificates of achievements issued to the [Petitioner] for efforts to export into international markets” that the Director noted.

The regulation at 8 C.F.R. § 204.5(h)(3)(i) contemplates an individual with sustained national or international acclaim, whose achievements have been recognized in the field of expertise, demonstrated by receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) does not contemplate an award granted to an individual’s employing entity. Because the Petitioner, not the Beneficiary, received the [redacted] the award is immaterial to whether the Beneficiary has received the type of prize or award contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(i). The record does not otherwise establish that the Beneficiary has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor, as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3).

We need not determine whether the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (ix) because, even if it did, the record would not satisfy at least three of the ten criteria at 8 C.F.R.

§ 204.5(h)(3). Accordingly, we reserve our opinion regarding whether the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iii) and (ix). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established the Beneficiary received a one-time achievement or, in the alternative, evidence that meets at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not shown that the significance of the Beneficiary’s work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Beneficiary has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.